collector's valuation he had erred on the side of generosity.

In accordance with section 51(1)(a) the cost of this reference shall be paid by the applicant *i.e.* the land owner.

Collector's award confirmed.

Solicitors: *Rithauddeen & Aziz.*

RAMOO v. ONG AH HO & ANOR.

[O.C.J. (Buttrose J.) May 31, 1968]
[Singapore — Suit No. 1219 of 1967]

Negligence — Highway — Junction controlled by traffic lights — Defective traffic lights — Duty of driver proceeding from minor road to major road.

Damages — Personal injuries — Elbow — Compound fracture dislocation of elbow joint — Pain and suffering — Loss of earnings.

A lorry driven by the 1st defendant came into collision with a taxi driven by the 2nd defendant at a junction between a minor road and a major road. The taxi was proceeding along the one way major road, while the lorry was entering the junction from the minor road. The junction was controlled by traffic lights. At the material time, the traffic lights were not functioning properly. At short intervals, the lights would show green in both directions. The plaintiff, a passenger in the taxi, brought an action against both drivers claiming damages for personal injuries as a result of the road accident. He suffered a compound fracture dislocation of the left elbow joint which needed several operations. It might be necessary to immobilise the elbow joint later.

Held: (1) both the defendants were guilty of negligence in failing to keep any or any proper lookout, and in failing to drive their respective vehicles with any degree of care and caution which the circumstances of the case required and the situation demanded;

(2) the 1st defendant was 75% responsible for the accident as he was proceeding from a minor road on to a one way major road and it was his duty to give way to traffic coming from his right;

(3) there should be an award of $13,000 for pain and suffering, $15 000 for loss of future earnings and $2,000 as special damages.

Case referred to:—

(1) *Joseph Eva Ltd.* v. *Reeves* [1938] 2 All E.R. 115.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Yap Tyou Min for the 1st defendant.

K. E. Hilborne for the 2nd defendant.

Cur. Adv. Vult.

Buttrose J.: These proceedings arise out of an accident which occurred on the 10th July, 1966, at the junction of Dunearn and Whitley Roads between a motor lorry driven by the 1st defendant and a taxi, in which the plaintiff was a passenger, driven by the 2nd defendant.

The taxi was proceeding along Dunearn Road towards the city while the motor lorry was travelling along Whitley Road in the direction of Dunearn Road intending to proceed across it and over the bridge which spans the canal between Dunearn and Bukit Timah Roads and on into Stevens Road which is in effect a continuation of Whitley Road.

The accident occurred in broad daylight on a Sunday morning at about 7.30 a.m.

This entire junction, *i.e.* the Dunearn/Whitley Road junction and the Bukit Timah/Stevens Road junction, is controlled by traffic lights.

Both the 1st defendant and the plaintiff said that the traffic lights at the Dunearn/Whitley Road junction appeared to be in order and each of them maintained that as they reached the junction on courses at right angles to each other the lights controlling their respective entries on to and across the junction were green and in favour of each of them. The taxi driver (the 2nd defendant) was not called as Mr. Hilborne who appeared for him elected to call no evidence and took the stand that no *prima facie* case of negligence had been made out against his client.

The independent police evidence established quite clearly that at the material time the traffic lights controlling the entire junction were defective and not functioning properly. Apart from the other police evidence there was the evidence of police constable Say Lip Buck who said that as he was returning to his barracks at Wayang Satu after coming off duty at Orchard Road Police Station he noticed that the traffic lights were out of order. This was about 7 a.m., some half an hour prior to the accident. The other police officers said that the traffic lights were still out of order after the accident.

I find as a fact that at the material time the traffic lights were defective and not working properly at the junction.

The evidence established that the traffic lights facing traffic approaching the junction from Whitley Road changed from green to amber and then back to green again with no red light appearing at all. The traffic lights facing traffic approaching the junction down Dunearn Road changed correctly from green to amber and then to red in their proper sequence but the changes were at a very fast rate and not at their normal speed.

According to a police corporal who was at the scene after the accident, and whose evidence I have no hesitation in accepting, at various stages during this malfunctioning of the traffic lights at the junction the lights controlling the traffic in both direction would be showing green for brief periods at short intervals.

What then are the principles of the law of negligence applicable to these findings of fact?

Mr. Yap for the 1st defendant asked me to say that in these circumstances there is no negligence attributable to either defendant and the liability for the accident must rest with the traffic authorities for having a faulty traffic lighting control system in operation. He invoked in aid the case of *Joseph Eva Ltd.* v. *Reeves* [1] where the Court of Appeal considered the application of the principles of the law of negligence to crossings controlled by traffic lights.

But that was a case of a motor vehicle entering a crossing against the appropriate traffic lights when they were showing red and the Court of Appeal held that a motorist entering a crossing when the appropriate lights were green in his favour owed no duty to traffic entering the crossing in disobedience to the lights beyond a duty that if he in fact saw such traffic he ought to take all reasonable steps to avoid a collision. As MacKinnon L.J. pointed out at p. 125:—

> "If, as the judge found, the light Reeves approached was green before he reached it, he was *prima facie* entitled to consider himself as on the open thoroughfare, and to go forward, without any apprehension that, in breach of the prohibition from the red light, the appellants' van or any other on the crossing would be intruding upon the thoroughfare that was closed to it. As Reeves was entitled to be without such apprehension, I do not think it could be said that he was doing anything negligent in going freely forward, when he was unable, by reason of the traffic which he was passing on his near side, to see into Lambeth Road upon that side."

It is perhaps not unworthy of note that all three members of the Court of Appeal felt some doubt as to whether, if they had been trying the case they would have arrived at the same conclusions of fact as did the trial judge.

Be that as it may, it is not this case where the appropriate lights relating to both defendants were faulty. In the view I take to say, as I understood Mr. Yap to do, that because both traffic lights were not functioning properly or were even showing green at the material time that that absolves the defendants from all blame is to take a too superficial and a too simplified view of the matter. It is necessary, I think, to examine the situation closer in the light of all the surrounding circumstances.

That the traffic lights controlling the entire junction were defective and not functioning properly was palpably obvious to anyone approaching it be he pedestrian or motorist. The police officers who arrived at the scene had no difficulty in noticing this state of affairs and in fact one of them, police constable Buck, to whose evidence I have had occasion to refer, said that on his arrival because of the faulty traffic lights cars, to use his own words, were all tangled up at the Bukit Timah/Stevens Road junction.

A situation had therefore arisen which called for the exercise of the utmost care and caution.

If the defendants had been keeping any or any proper look out they must, in the view I take, have seen that their appropriate traffic lights were not functioning properly and were out of order which should have at once put them on their guard and warned them of the danger of proceeding across the junction until they were satisfied that it was safe to do so.

So, far from this object being achieved, they blithely carried on regardless apparently of any traffic approaching them on a course which must inevitably lead to a collision.

Not only were the traffic lights at the junction visible from a long way off in either direction but also traffic approaching it down Dunearn Road could clearly be seen for a considerable distance by motorists approaching it along Whitley Road and *vice versa*. There was nothing to impede the view of either of the defendants.

The remarkable feature of the 1st defendant's evidence was that he only noticed the traffic lights first when he was but 15 feet from the junction. I do not accept or believe this evidence. Even more astonishing was his statement that as the lights were green he accelerated his lorry to cross the junction and it was not until he had actually proceeded some 15 feet across it (i.e. into Dunearn Road) that he first became aware of a vehicle bearing down on him from his right.

He did not even see it but said he heard a sound of a strong blast of wind — like the sound of oncoming vehicle. He maintained he applied his brakes, although no brake marks were discernible on the road surface and swerved to the left. The damage to the vehicles clearly points to the fact that it was the 1st defendant's lorry which hit the near side of the taxi — the front near side door of the taxi being displaced and the rear near side door dented.

I did not have the advantage of hearing the 2nd defendant's version of the accident as he was not called for the reasons I have stated. The plaintiff's evidence added very little to the picture but as he was merely a passenger that is perhaps not surprising. He also failed to see the lorry until it was inside the junction and almost on top of him.

Another extraordinary feature of the case was that the question of the traffic lights being defective was first raised, so it would appear, at the trial and then by the 1st defendant's counsel in cross-examination of a police corporal called by the plaintiff. Mr. Yap also called further police evidence as to the lights being out of order and this despite the fact that his client maintained that they were in order.

Neither of the defendants said a word about it in their police reports or in their pleadings although their attention was specifically drawn to the matter by the police corporal who arrived on the scene shortly after the accident occurred.

Both the defendants, in my judgment, were guilty of negligence in failing to keep any or any proper look out and in failing to drive their respective vehicles with that degree of care and caution which the circumstances of the case obviously required and the situation demanded.

The further question which arises is as to the degree of their culpability. In my view the greater blame is attachable to the 1st defendant. He was proceeding from a minor road out on to a one way major road which takes virtually the whole of the city bound traffic coming from north of the junction.

He was not concerned therefore with any traffic coming from his left but only from his right to which it was his duty to give way and on his own showing he never saw the taxi until the collision had to all intents and purposes taken place.

The 2nd defendant, on the other hand, was travelling down this one way major road and whatever the situation which arose would anticipate traffic on his left giving way if a collision appeared imminent by the two vehicles keeping on their respective courses. The 2nd defendant did apply his brakes as the 29 feet 7 inch brake marks on the road surface clearly indicate. I consider that the rapid changing of his appropriate traffiic lights albeit in proper sequence should have been almost as effective a warning that something was wrong as the absence of any red light showing should have been to the 1st defendant.

Giving the best consideration I can to the materials before me I apportion the blame as to 75 per cent on the 1st defendant and 25 per cent on the 2nd defendant.

I now proceed to assess the damages to which, in my view, the plaintiff is entitled. He has undoubtedly suffered a very severe injury — a compound fracture dislocation of the left elbow joint known as a *Monteggia* fracture. It is considered one of the most serious injuries that can occur in the elbow joint because the complete mechanism of the joint is disrupted. The plaintiff was admitted to hospital on the day of the accident. The fracture was reduced by the insertion of a *Kirscher* wire to exert traction and a plaster was applied overall to maintain position. The reduction turned out to be unsatisfactory and a further operation had to be undertaken. This again was unsatisfactory and a still further operation became necessary in which a *Steiman's Pin* was inserted down the length of the ulnar to maintain its position.

The plaintiff has undergone considerable pain and suffering over a long period due to the injury and the reccurrent operations necessary to get some kind of use back in his elbow at least to be able to use his hand. His range of movement is severely restricted as I was able to observe from a practical illustration which Mr. Gawne the Senior Government Orthopaedic Surgeon got the plaintiff to give me. He has already developed osteoarthritis in the elbow joint which will get worse with age and the pain will increase. According to Mr. Gawne it may well be that later on it will become necessary to immobilize the elbow joint and render it rigid. In all the circumstances I consider a sum of $13,000 to be a fair and reasonable award for his pain and suffering and loss of amenities.

There remains to consider the plaintiff's loss of future earnings. This is always a difficult matter to determine. The plaintiff is now quite incapable of returning to his former work which was that of a labourer engaged in heavy labour. He is restricted now to sedentary or light work such as a watchman or a lift attendant work which does not entail lifting of weights.

His average monthly earnings were $180 a month.

As a result of the accident he was discharged from his government employment on the 1st October, 1967 and since then has been unemployed despite attempts to find a job. He is now 43 years of age. Despite the somewhat gloomy view which Mr. Cashin paints of the labour market I think it would be wrong for the plaintiff to look upon himself as unemployable although I appreciate with his arm in the state it is, it will be difficult to obtain employment and may take some considerable time.

Taking into consideration all the various factors and contingencies I consider a reasonable sum to award for loss of future earnings is $15,000.

For loss of earnings to date claimed as special damages I award $2,000.

This brings the total damages awarded to $30,000.

There will accordingly be judgment for the plaintiff for $30,000 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Battenberg & Talma; Hilborne & Co.*